

Bulk Water Supply Agreement

Melbourne Water Corporation
Western Region Water Authority

Stock Exchange Centre
530 Collins Street
Melbourne VIC 3000
Tel 61 3 9614 1011
Fax 61 3 9614 4661
www.aar.com.au



Table of Contents

1.	Definitions and Interpretation	1
2.	Term of Agreement	4
3.	Obligations of Melbourne Water	5
4.	Obligations of Western Water	5
5.	Quantity	5
6.	Water pressure	6
7.	Water quality	7
8.	Supply during metropolitan restrictions	8
9.	Emergency supply	8
10.	Notification to take supply from Interface Point	9
11.	Supply to customers where water not taken from Interface Point	9
12.	Measurement	9
13.	Charges for Water Supply Services	10
14.	Refund of fixed availability charge	11
15.	Appointment and authority of Principal Representatives	12
16.	Appointment and authority of Operating Representatives	12
17.	Force Majeure	13
18.	Confidentiality	13
19.	Dispute resolution	15
20.	Termination	17
21.	Notices	17
22.	GST	18
23.	Governing law and jurisdiction	19
24.	Amendments	19
25.	Liability for expenses	19
26.	Giving effect to this Agreement	19
27.	Waiver of rights	19
28.	Operation of Agreement	20
29.	Consents	20
30.	Publicity	20
31.	Relationship between parties	20
32.	Operation of Indemnities	20

33. Survival	20
34. Counterparts	20
Schedule 1	21
Schedule 2	214

Date	2004
Parties	
1.	Melbourne Water Corporation of 100 Wellington Parade, East Melbourne, Victoria (<i>Melbourne Water</i>)
2.	Western Region Water Authority of Robertson Street, Gisborne, Victoria (<i>Western Water</i>)
Recitals	
A	Under the <i>Melbourne and Metropolitan Board of Works Act 1958</i> (Vic), Melbourne Water may, if it sees fit, and upon application by an Authority under the <i>Water Act 1989</i> (Vic) (<i>Water Act</i>) that has a water district under the Water Act which lies in the vicinity of the metropolis or has any aqueduct, water main or pipe of Melbourne Water passing through it, supply water to the Authority by measure and on such terms, conditions and charges as are agreed between the parties.
B	Western Water is an Authority within the meaning of the Water Act and is empowered to carry out any function under the Water Act in relation to water supply within the area of its authority.
C	The parties have agreed to execute a Bulk Water Supply Agreement in the terms set out in this document, to detail Melbourne Water's supply of bulk water to Western Water.
D	The parties wish to: <ul style="list-style-type: none"> (a) clarify their respective rights and obligations in relation to each other; (b) establish clear bulk water supply objectives from Melbourne Water and Western Water in relation to the operations; and (c) establish the basis for future cooperation in ensuring that appropriate and sufficient measures are taken to achieve these objectives.

It is agreed as follows.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Affected Party means, in the case of an Event of Force Majeure, the party affected by that event of Force Majeure.

Annual Water Supply means the amount of water taken by Western Water from Melbourne Water's system in a calendar year.

Business Day means a day on which banks are open for business in Melbourne, Victoria, not being a Saturday, Sunday or a public holiday.

Consideration has the meaning given by the GST Law.

CPI means Consumer Price Index for Melbourne as published by the Australian Bureau of Statistics.

Emergency means any event that is outside the normal operating arrangements of Western Water and Melbourne Water or an event that could not be reasonably predicted.

Force Majeure means an event or cause beyond the reasonable control of the party claiming force majeure including, without limitation:

- (a) act of God, lightning, storm, flood, fire, earthquake or any other natural disaster, explosion or epidemic;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) the effect of any change in applicable laws, orders, rules or regulations of any government or other competent authority;
- (e) inability to obtain or delay in obtaining any necessary approval, permit or other authority from any Parliament or Government or Governmental agency;
- (f) a default by a third party under an agreement with the Affected Party; and

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

High Demand Day means a day with a temperature exceeding 35 degrees celcius.

Hillside Pumping Station means Western Water's pumping station shown in Schedule 2.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a party includes an Input Tax Credit for an acquisition made by that party but to which another member of the same GST Group is entitled under the GST Law.

Interface Meters means the meters at the Interface Points 1 and 2 used to measure billing volumes when Western Water is taking water supply to areas other than the Loemans Road Area.

Interface Point 1 means a point in the water supply system at Loemans Road where asset ownership transfers from Melbourne Water to Western Water as shown in Schedule 1.

Interface Point 2 means a point in the water supply system at Melton Highway where asset ownership transfers from Melbourne Water to Western Water as shown in Schedule 2.

Invoice has the meaning given by the GST Law.

Loemans Road Supply means supply to the area shown in Schedule 1 (Loemans Road Area).

Maximum Withdrawal Rate means the maximum instantaneous flow at which Western Water is permitted to extract water at the Interface Point.

Melbourne Water Supplied System means those parts of Western Water's water reticulation system connected to Melbourne Water's system through the Interface Point and capable of receiving water from Melbourne Water.

Metropolitan Pricing Order means an Order made by the Governor in Council under section 21A of the *Water Industry Act 1994* and includes, but is not limited to, a determination made by the Essential Services Commission under the *Water Industry Act 1994* and the *Essential Services Commission Act 2001* to regulate prices in the metropolitan water sector.

Payable Amount means the amount payable for any Taxable Supply made under or in relation to this Agreement.

Reticulation Meter means the meter on the reticulation main supplying the Loemans Road Area. This meter will be used to measure the billing volumes when Western Water is not taking supply from Melbourne Water.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Tax Adjustment Amount means the amount by which the liabilities incurred by Melbourne Water in making a supply is reduced or increased as a result of a Tax Adjustment Event occurring. The amount of any Input Tax Credits and diesel fuel rebate or grant to which Melbourne Water is entitled to will be taken into account in quantifying the liabilities incurred for the purposes of this clause.

Tax Adjustment Event means any change in the liability of the Melbourne Water to Taxes or entitlements to claim a rebate, refund or credit in respect of Taxes occurring as a result of Government taxation measures connected to the introduction of a GST.

Taxes means accommodation taxes, diesel fuel rebate, financial institutions duty, debits tax, sales taxes, excise duties, stamp duties and customs duties.

Water Supply Service means the obligation imposed on Melbourne Water in sub-clause 3.1.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely.
- (b) the gender includes all genders.
- (c) if a word or phrase is defined, its other grammatical forms have the corresponding meaning.
- (d) a reference to a person, corporation, trust, partnership an incorporated body or other entity includes any of them and any executor, administrator or successor in law of the person.

- (e) a reference to a clause or Schedule is a reference to a clause or a Schedule to this Agreement.
- (f) a reference to an agreement or document (including, without limitation), a reference to this Agreement is to the Agreement or document as amended, varied, supplemented, novated or replaced except to the extent prohibited by this Agreement or that other Agreement or document.
- (g) a reference to a party to this Agreement or another Agreement or document includes the party's successors and permitted substitutes or assigns and, where applicable, the party's legal personal representatives.
- (h) a reference to legislation or to a provision of legislation includes modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) a reference to **writing** includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (j) a party may give notice or report under this Agreement in written or electronic form

1.3 Consents or Approval

If the doing of any act, matter or thing under this Agreement is dependent on the consent or approval of a party or is within the discretion of the party, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the party in its absolute discretion.

2. Term of Agreement

2.1 Commencement of Agreement

This Agreement commences on 1 April 2004.

2.2 Initial Term

Subject to early termination in accordance with clause 20, or the review of the Agreement in accordance with clause 2.4, this Agreement will continue for a period of three years.

2.3 Extensions

- (a) Western Water may elect to extend the term of the Agreement for a further three years (provided Western Water is not in breach of the Agreement) by giving written notice of such intention to Melbourne Water at least three months prior to the end of the initial term.
- (b) An extension made in accordance with paragraph (a) above will be on the same terms as this Agreement except:
 - (i) this sub-clause 2.3 is excluded; and
 - (ii) the Charges will be indexed as specified in Clause 13.1(c).

2.4 Review of Agreement

If, during the initial term of the agreement, there are material changes to Western Water's water allocation from the Werribee River catchment, then the quantities supplied and prices charged under this agreement will be reviewed. Western Water shall notify Melbourne Water within 30 days of receiving notification of an increase in water entitlement from the Werribee River catchment. Within 90 days of receiving notice of increased water allocation, the parties shall review and reach agreement on any changes to quantities and prices. If agreement is unable to be reached within 90 days, clause 19 will apply.

3. Obligations of Melbourne Water

3.1 To supply water

Melbourne Water must, in accordance with and subject to this Agreement, provide Western Water with a supply of water:

- (a) at the quantity determined under clause 5;
- (b) at the pressure determined under clause 6; and
- (c) at the quality determined under clause 7.

3.2 To recover charges

Melbourne Water may recover from Western Water, any charges or interest due to Melbourne Water under sub-clause 4.2.

4. Obligations of Western Water

4.1 To receive water

Western Water may, in accordance with and subject to this Agreement, receive water supplied by Melbourne Water.

4.2 To pay charges

Western Water must pay to Melbourne Water, charges and interest determined, calculated and invoiced in accordance with clause 13.

5. Quantity

5.1 Annual Water Supply quantity

Melbourne Water must, in accordance with and subject to this Agreement, provide to Western Water an Annual Water Supply of up to 11,250 megalitres.

5.2 Maximum rate of withdrawal

- (a) The maximum rate of withdrawal of water by Western Water at the Interface Point 1 must not exceed 17 megalitres per day and at the Interface Point 2 must not exceed 40 megalitres per day.

- (b) The rate of withdrawal at the Interface Point 2 shall be limited to maintain a minimum suction hydraulic grade of 165m AHD at the Hillside Pumping Station. This limit may result in the rate of withdrawal being reduced below the 40 ML/d on a High Demand Day between the hours 6pm and 10pm.

5.3 Failure to comply with water quantity requirements

- (a) Where Melbourne Water fails to provide the Water Supply Service for a period of less than 30 days in any calendar year, Western Water's compensation is limited to a refund of the fixed availability charge in accordance with clause 14.
- (b) Where Melbourne Water fails to provide the Water Supply Service for more than 30 days in any calendar year, Melbourne Water must pay to Western Water any costs or expenses directly incurred by Western Water. For avoidance of doubt, Melbourne Water is not liable to refund the fixed availability charge under clause 14 after the first 30 days of failure to provide Water Supply Services to Western Water in any calendar year.
- (c) Costs or expenses referred to in paragraph (b), in the case of Western Water, include the difference between:
 - (i) the revenue lost by Western Water as a result of Melbourne Water's failure to supply; and
 - (ii) all direct and indirect costs that Western Water would have incurred in performing this agreement if the failure to supply had not occurred,but does not include:
 - (iii) any amount calculated as the difference between sub-paragraphs (i) and (ii) which is less than \$10,000,and is limited to the reasonable cost or expense of obtaining an alternative supply of water not exceeding 75% of the maximum amount at the Interface Points.
- (d) A party must do everything it reasonably can to mitigate any loss resulting from the failure to supply referred to in paragraph (b).

6. Water pressure

6.1 Water pressure for normal operation

Subject to sub-clause 6.2, Melbourne Water will use all reasonable endeavours to provide water to Western Water at the Interface Point 1 at a hydraulic grade of between 184m AHD and 200m AHD and at the Interface Point 2 at a hydraulic grade of between 165m AHD and 200m AHD.

6.2 Water pressure may vary

The water pressure at the Interface Point may vary and is not guaranteed by Melbourne Water where the following occur:

- (a) an Emergency; or
- (b) where the aggregate daily demand from Melbourne's retail water companies exceeds 3100 megalitres.

For the avoidance of doubt, a failure to meet pressure requirements due to either of the above is not a breach of this Agreement.

7. Water quality

7.1 Water quality

Melbourne Water must supply water at the Interface Points which is disinfected and meets the health requirements of the National Health and Medical Research Council (*NHMRC*) Guidelines for Drinking Water Quality in Australia (1987) until 30 June 2004 and the health standards of the Victorian Drinking Water Regulations from 1 July 2004, provided samples taken at the Interface Points are deemed to represent distribution system monitoring.

The water will also be fluoridated to meet the requirements of the *Victorian Health (Fluoridation) Act 1973*.

7.2 Water quality standards beyond Interface Point

- (a) Subject to Melbourne Water complying with its water quality obligations at the Interface Point, Western Water is responsible for the water quality of water supplied by Western Water to its customers.
- (b) Melbourne Water is not responsible for water quality (including, without limitation, microbiological, physical, biological, chemical, taste or odour) beyond the Interface Point.
- (c) Western Water must indemnify and at all times keep Melbourne Water fully indemnified against all and any claims, losses, liabilities and expenses which Melbourne Water may suffer or incur directly arising out of or related in any way to a change in the quality of water beyond the Interface Point, except to the extent that the loss, liability or expense was incurred as a result of the negligence of Melbourne Water.
- (d) Melbourne Water must indemnify and at all times keep Western Water fully indemnified against all and any claims, losses, liabilities and expenses which Western Water may suffer or incur directly arising out of or related in any way to the quality of water at the Interface Point, except to the extent that the loss, liability or expense was incurred as a result of the negligence of Western Water.

7.3 Water quality management

- (a) If Western Water measures a degradation in water quality which may originate from Melbourne Water's water supply system then Western Water must notify Melbourne Water of this problem as soon as practical.
- (b) If Melbourne Water measures a non-compliance with the water quality standards in Clause 7.1 or proposes changing the source of supply to Western Water, then Melbourne Water must notify Western Water as soon as practical.
- (c) Both organisations must use their reasonable endeavours to work towards resolving the issues to minimise impact on customers of Western Water.

8. Supply during metropolitan restrictions

8.1 Notification of metropolitan restrictions

In the event of Melbourne Water becoming aware that the supply of water by Melbourne Water to Melbourne metropolitan customers is likely to be the subject of restrictions, Melbourne Water must notify Western Water in writing within seven days of becoming aware of the event.

8.2 Condition of supply during metropolitan restrictions

If Melbourne metropolitan customers are subject to water restrictions, the quantity of water supplied under clause 5 is conditional on Western Water within seven days of either restrictions being imposed on Melbourne metropolitan customers or Western Water receiving notice from Melbourne Water under clause 8.1, which ever is later:

- (a) implementing similar levels of restrictions for Western Water customers on the Melbourne Water Supplied System similar to those faced by Melbourne metropolitan customers; or
- (b) restricting its daily withdrawals from Melbourne Water to 13 megalitres per day during that period at Interface Point 1 and 30 megalitres per day at Interface Point 2.

8.3 Consequences of non-compliance with condition

If Western Water does not comply with the condition in sub-clause 8.2 within seven days, Melbourne Water shall be entitled to restrict water supply to Western Water to 13 megalitres per day at Interface Point 1 and 30 megalitres per day at Interface Point 2.

9. Emergency supply

9.1 Emergency supply

In the event of an Emergency supply being required:

- (a) Western Water:
 - (i) may commence to take the water immediately, subject to sub-clauses 5.1 and 5.2; and
 - (ii) must inform Melbourne Water as soon as practical of Western Water's intentions to enable Melbourne Water to make the necessary operational arrangements for Western Water to take water.
- (b) Melbourne Water must make all reasonable efforts to ensure that the minimum pressure in the pipeline is reached as quickly as reasonably practical.

9.2 Emergency Operation

- (a) In the event of an Emergency in Melbourne Water's system, Melbourne Water must inform Western Water as soon as practical of Melbourne Water's intention to limit or cease the supply to Western Water.
- (b) In the event of an Emergency, Melbourne Water after consultation with Western Water may shut down the Hillside Pumping Station.

10. Notification to take supply from Interface Point

In relation to water supply drawn from Melbourne Water, Western Water must give Melbourne Water seven working days notice of Western Water's intention:

- (a) to start taking water from the Interface Point 1 for other than the Loemans Road Area or from the Interface Point 2; and
- (b) to cease taking water from the Interface Point 1 for other than the Loemans Road Area or from Interface Point 2.

11. Supply to customers where water not taken from Interface Point

Where Western Water ceases to take water from the Interface Point to areas other than the Loemans Road Area, Melbourne Water must keep its valve system sufficiently open to enable Western Water to continue to supply its customers in the Loemans Road Area.

12. Measurement

12.1 Billing volume during withdrawals from Interface Point

- (a) During withdrawals from the Interface Point 1 to areas other than the Loemans Road Area and withdrawals from Interface Point 2, all measurement for compliance with the Agreement must be made at the designated Interface Points.
- (b) Melbourne Water must, at its expense, install, test and maintain an Interface Meter at the Interface Points in accordance with the meter manufacturer's specification.
- (c) The Interface Meters must be telemetered to facilitate remote reading of the meter.
- (d) Melbourne Water must conduct calibration tests on the Interface Meters annually.
- (e) Within two weeks of completing the calibration tests, Melbourne Water must provide Western Water with results from the calibration tests.

12.2 Billing volume at all other times

- (a) At all other times, billing volumes must be measured at the Reticulation Meter installed on the reticulation main to the Loemans Road Area.
- (b) Western Water must, at its expense, install, test and maintain the Reticulation Meter in accordance with the meter manufacturer's specification.
- (c) Western Water will conduct calibration tests on the Reticulation Meter annually.
- (d) Within two weeks of completing the calibration tests, Western Water must provide Melbourne Water with the results from the calibration tests.

12.3 Water Quality

- (a) Melbourne Water must collect and give to Western Water:
 - (i) microbiological water quality data at the Interface Point 1; and

- (ii) turbidity, apparent colour, pH, iron and manganese data at the Kenny Street water quality monitoring point in Broadmeadows.
- (b) Melbourne Water must collect at least bi-monthly water quality data at the Greenvale Reservoir. The data will be made available to Western Water within 2 weeks of its receipt by Melbourne Water.

12.4 Meter reading for billing during withdrawals from the Interface Point

- (a) After Western Water has notified Melbourne Water of its intention to take supply of water from the Interface Point 1 or Interface Point 2 under this Agreement, and prior to commencement of the water supply, Melbourne Water and Western Water must separately record the Interface Meters reading using the smallest unit increment on the gauge.
- (b) Melbourne Water must make all necessary arrangements to provide access to the site for Western Water staff for this purpose.
- (c) Melbourne Water must read the Interface Meters monthly for billing purposes.

12.5 Meter reading at other times

- (a) When Western Water is not taking supply to other than the Loemans Road Area, the billing meter will be the Reticulation Meter on the reticulation main to Loemans Road Area.
- (b) Western Water must
 - (i) read the Reticulation Meter monthly for the purpose of billing; and
 - (ii) forward to Melbourne Water, the monthly readings from the Reticulation Meter.

13. Charges for Water Supply Services

13.1 Charges

Western Water must pay Melbourne Water:

- (a) a fixed availability charge of \$511,712 per annum;
- (b) a variable charge of \$307.28 per megalitre for consumption up to 5,000 megalitres per year and \$409.37 per megalitre for consumption above 5,000 megalitres per year; and
- (c) fixed and variable charges are to be indexed each year in accordance with the Metropolitan Pricing Order.

13.2 Invoicing of charges

Melbourne Water must invoice Western Water:

- (a) in advance for the fixed availability charge on the first Business Day of each month; and
- (b) in arrears for the usage charge in accordance with the variable rates listed in sub-clause 13.1 on the first Business Day of each month.

13.3 What an invoice must contain

Each invoice for the usage charge must contain:

- (a) the measured volume delivered to Western Water since the last invoice;
- (b) details of any malfunctioning or out-of-service Interface Meter or Reticulation Meter;
- (c) any volume of water estimated, rather than measured, by Melbourne Water using historical information and a process agreed by both parties; and
- (d) the amount payable by Western Water.

13.4 When invoice must be paid and method of payment

- (a) Western Water must pay any invoice within 14 days of the date of receipt of the invoice.
- (b) The payment referred to in paragraph (a) must be made by electronic transfer to such bank account as Melbourne Water may, from time to time, advise Western Water in writing.

13.5 Interest payable

- (a) Western Water must pay interest at the interest rate on any amount not paid in accordance with sub-clause 13.4, calculated daily on the amount outstanding from the date upon which the amount is due until the amount is paid in full.
- (b) For the purposes of paragraph (a), the interest rate is the Bank Bill Swap Reference Rate on the date upon which the amount is due.
- (c) Upon payment of the outstanding amount in full, Melbourne Water must invoice Western Water separately for the interest outstanding. This payment must be made within seven days of receipt of the invoice.

13.6 Disputes about amounts payable

- (a) Western Water may give Melbourne Water written notice if it disputes any invoice given under this clause.
- (b) If Western Water so requests, Melbourne Water must promptly give Western Water further information about the volume of water referred to in the invoice and how any estimate of volume was made.
- (c) Notwithstanding any dispute, Western Water must, on the relevant due date, pay:
 - (i) the fixed availability charge;
 - (ii) the greater of:
 - (A) the amount of the usage charge not in dispute; and
 - (B) the average usage charge for the preceding three months.
- (d) Any dispute under this sub-clause must be determined in accordance with clause 19.
- (e) A party required to make a payment by a determination under paragraph (d) must do so within seven days of the date of the determination.

14. Refund of fixed availability charge

In the event that Melbourne Water is unable to provide the Water Supply Services to Western Water for more than 48 hours in any consecutive 90 day period, other than due to the failure of any asset of

Western Water or an Emergency, Melbourne Water must pay compensation of \$1,400 to Western Water for each additional 24 hours during that period when Melbourne Water is so unable to supply Western Water.

15. Appointment and authority of Principal Representatives

15.1 Appointment

- (a) Within one week of executing this Agreement, each party must appoint and must, for the duration of this Agreement, keep appointed, a Principal Representative to administer this Agreement on behalf of the party appointing the Principal Representative.
- (b) Each party must advise the other party in writing the name of the nominated Principal Representative.
- (c) Each party must give the other party notice of any change to the name, postal address, e-mail address, telephone number, facsimile number and after-hours contact details of its Principal Representative.

15.2 Authority

Each party must confer upon its Principal Representative, and warrants to the other party that it has so conferred, all necessary power to give or receive any notice, to give any approval, undertaking or assurance to enter any agreement, or to do any other thing which a party may do under this Agreement, on behalf of the party appointing that Principal Representative.

16. Appointment and authority of Operating Representatives

16.1 Appointment

- (a) Within one week of executing this Agreement, each party must appoint and must, for the duration of this Agreement, keep appointed, an Operating Representative to be responsible for the day to day operations of this Agreement on behalf of the party appointing that Operating Representative.
- (b) Each party must advise the other party in writing the name of the nominated Operating Representative.
- (c) Each party must give the other party notice of any change to the name, postal address, e-mail address, telephone number, facsimile number and after-hours contact details of its Operating Representative.

16.2 Authority

Each party must confer upon its Operating Representative, and warrants to the other party that it has so conferred, all necessary power to be responsible for the day-to-day administration on behalf of the party appointing that Operating Representative.

17. Force Majeure

17.1 Event of Force Majeure

If the Affected Party is prevented in whole or in part from carrying out a Non Financial Obligation under this Agreement as a result of Force Majeure, it must promptly notify the other party accordingly. The notice must:

- (a) specify the obligations it cannot perform;
- (b) fully describe the event of Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

The Affected Party must keep the other party informed of the above at regular intervals or promptly upon request of the other party.

17.2 Suspension of Non Financial Obligations

Following this notice, the Non Financial Obligation which cannot be performed will be suspended as far as it is affected by the event of Force Majeure and while that event continues.

17.3 Remedy of Force Majeure

The Affected Party must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.

17.4 Mitigation

The Affected Party must take all action reasonably practicable to mitigate any loss suffered by the other party or a third party as a result of its failure to carry out its obligations under this Agreement.

17.5 No requirement to settle labour dispute

The Affected Party is not required, under sub-clause 17.3 or 17.4, to settle any labour dispute against the reasonable wishes of the Affected Party.

18. Confidentiality

18.1 Confidentiality

Except as provided in sub-clauses 18.2 and 18.6, a party must:

- (a) not disclose any confidential information of the other party, without the prior written approval of the other party; and
- (b) not require, assist or permit any person to have access to, or use, disclose or reproduce any confidential information of the other party; and
- (c) take reasonable steps to enforce obligations imposed under this clause.

18.2 Permitted disclosures

Despite sub-clause 18.1, a party may disclose confidential information of the other party:

- (a) to any employee, contractor or consultant of the party who reasonably needs to know the confidential information for that party to exercise its rights or perform its obligations under this Agreement; and
- (b) if it is:
 - (i) required by any Act; or
 - (ii) compelled by law or a court order, to disclose it; or
 - (iii) demanded by the Relevant Minister.
- (c) In this sub-clause **Relevant Minister** means a Minister responsible for administering an Act which confers functions or powers or imposes duties upon a party that are necessary for that party to enter into and perform this Agreement.

18.3 Permitted disclosure to an employee, contractor or consultant

A party may only disclose confidential information under paragraph 18.2(a) if it imposes upon the person to whom the confidential information is disclosed, an obligation:

- (a) only to use the confidential information; and
- (b) not to disclose that confidential information to any other person, except, for the sole purpose for which the confidential information is disclosed.

18.4 Permitted disclosure required by law or Relevant Minister

If a party is required or compelled to disclose confidential information of the other party under paragraph 18.2(b), it must:

- (a) immediately give written notice of that fact to the other party; and
- (b) use its best efforts only to disclose that confidential information of the other party on terms which preserve the strictest confidentiality.

18.5 Breach of Confidentiality

The parties agree and acknowledge that:

- (a) a party may bring proceedings to restrain any breach or threatened breach by the other party of this clause; and
- (b) the unauthorised use, disclosure or divulgence of, or dealing with, the confidential information of a party by the other party will cause irreparable harm to that party, for which damages will not be an adequate remedy.

18.6 Disclosure to Melbourne's retail water companies

The parties do not intend this clause to prevent Melbourne Water disclosing to any Melbourne retail water company information about Melbourne Water's operation and management of, and plans for improving, Melbourne Water's water supply system, for the purposes of any bulk water supply agreement between Melbourne Water and that Licensee.

18.7 Survival

This clause survives the termination of this Agreement.

18.8 Definition of confidential information

For the purposes of this clause, "confidential information" means any knowledge, information or know-how relating to a party's business, systems, customers, property, assets or affairs which:

- (a) has been or is disclosed, communicated or delivered to the other party under or in connection with this Agreement; and
- (b) has come or comes to the knowledge, or into the possession, of the other party under or in connection with this Agreement,

but does not include the provisions of this Agreement.

19. Dispute resolution

19.1 When a dispute arises

- (a) If any difference or dispute arises between the parties under or in relation to this Agreement or its subject matter, they agree to seek, in good faith, to resolve the matter by negotiations between the Principal Representatives.
- (b) A difference or dispute arises at the time when one party notifies the other party in writing that there is a difference or dispute about a matter specified in the notice.
- (c) If the Principal Representatives do not resolve the dispute within 7 days of it arising, either party may give written notice to the other party, requiring the matter to be:
 - (i) resolved by the panel under sub-clause 19.2; or
 - (ii) referred to mediation under sub-clause 19.3; or
 - (iii) referred to an expert referee under sub-clause 19.4.
- (d) A party may only commence legal proceedings in respect of a difference or dispute referred to in paragraph (a) after an expert referee referred to in sub-clause 19.4 has had a reasonable opportunity to decide or to make a determination in respect of the difference or dispute.
- (e) If a difference or dispute is referred for resolution under any or all of sub-clauses 19.2, 19.3 and 19.4, neither party may oppose an application for a stay of legal proceedings in respect of the dispute, pending the conclusion of proceedings or the making of a decision or determination, as the case requires, under any or all of those sub-clauses.

19.2 Reference to the panel

- (a) The panel consists of:
 - (i) the Managing Director of Melbourne Water; and
 - (ii) the Chief Executive of Western Water.
- (b) The panel must meet to consider any difference or dispute within 7 days of it being referred to the panel.

- (c) A decision of the panel may only be made by the unanimous agreement of the members of the panel.
- (d) If the panel is unable to reach an agreement on a decision within 14 days of the meeting referred to in paragraph (b), the parties must either refer the matter to:
 - (i) mediation under sub-clause 19.3; or
 - (ii) an expert referee under sub-clause 19.4.

19.3 Mediation

- (a) The mediator is a person:
 - (i) nominated jointly by the parties; or
 - (ii) if the parties cannot agree,
 - (A) nominated by the chair of Lawyers Engaged in Alternative Dispute Resolution (or that person's nominee); or
 - (B) determined by some other process agreed between the parties at the time.
- (b) Mediation must occur within 30 days of the appointment of a mediator.
- (c) The parties must meet the mediator's costs in equal shares.
- (d) Mediation must occur in accordance with the Law Institute of Victoria Code of Practice for Mediation, or an equivalent code agreed to by the parties.
- (e) If the parties fail to resolve the difference or dispute within 14 days after mediation has concluded, the difference or dispute must be determined by an expert referee under sub-clause 19.4.

19.4 Reference to expert referee

- (a) The expert referee is a person or persons:
 - (i) nominated jointly by the parties; or
 - (ii) if the parties cannot agree:
 - (A) nominated by the President of the Institution of Engineers Australia (Victorian Division) (or that person's nominee); or
 - (B) determined by some other process agreed between the parties at the time, who must decide the matter within 30 days of the expert referee's appointment.
- (b) If the expert referee is more than one person, any decision must either be unanimous or made by a majority.
- (c) The expert referee is not an arbitrator.
- (d) An expert referee must give written reasons for a determination, if either party so requests.
- (e) Unless the expert referee otherwise determines, each party must:
 - (i) bear its own costs of proceedings before the expert referee; and
 - (ii) meet the costs of the expert referee in equal shares.

19.5 Dispute deposit

- (a) Within 7 days of the appointment of an expert referee, each party must lodge with the expert referee a dispute deposit of \$20,000 as security against costs and the expert referee's determination.
- (b) Failure by a party to lodge a dispute deposit does not invalidate the appointment of an expert referee or prevent the referee from making a determination.
- (c) An expert referee, as part of its determination, must make an award for some or all of the dispute deposit lodged by a party either to be applied to:
 - (i) the costs of the other party; or
 - (ii) to any amount awarded to the other party as part of the determination,or to be returned to that party.

19.6 Consequences of a dispute

- (a) Any decision of the panel or the expert referee is binding on the parties for all purposes, providing that the panel or expert referee has not made a manifest error of fact or law, or failed to observe natural justice.
- (b) Subject to paragraph (a), this clause does not prejudice or affect any right of a party to take any other action under this Agreement.

20. Termination

This Agreement will terminate if:

- (a) the parties so agree in writing; or
- (b) Melbourne Water ceases to have the statutory power to provide Water Supply Services to Western Water.

21. Notices

Any notice, demand, consent or other communication (a *Notice*) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address or fax number last notified by the intended recipient to the sender:
 - (i) **Melbourne Water Corporation**
PO Box 4342
MELBOURNE VIC 3001

Principal Representative: Mr Tony Antoniou
Group Manager – Service Delivery

Telephone No: (03) 9235 2659

Fax No: (03) 9235 2692

E-mail address: tony.antoniou@melbournewater.com.au

- (ii) **Western Water**
Robertson Street (Locked bag 2)
GISBORNE VIC 3473

Principal Representative: Mr Paul Louws
Asset Manager

Telephone No: 5421 9480

Fax No: 5421 9455

E-mail address: paul.louws@westernwater.com.au

- (c) will be taken to be duly given or made:
- (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, two Business Days after the date of posting; and
 - (iii) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00 pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

22. GST

22.1 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.

22.2 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to cost, expense or other liability incurred by a party, must exclude the amount of any Input Tax Credit entitlement of that party in relation to the relevant cost, expense or other liability. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.

22.3 Timing of the payment of the GST Amount

The GST amount is payable on the earlier of:

- (a) the first date on which all or any part of the Consideration for the Taxable Supply is provided; and
- (b) the date five Business Days after the date on which an Invoice is issued for the Taxable Supply.

22.4 Revenue exclusive of GST

Any reference in this Agreement (other than in the calculation of Consideration) to cost, expense or other similar amount (*Cost*), is a reference to that Cost exclusive of GST.

22.5 GST obligations to survive termination

This clause will continue to apply after expiration or termination of this Agreement.

23. Governing law and jurisdiction

This Agreement is governed by the laws of Victoria. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement.

24. Amendments

No amendment or variation of this Agreement is valid or binding on a party unless made in writing executed by the Principal Representatives or the Directors of both parties.

25. Liability for expenses

Each party must pay its own expenses incurred in negotiating and executing this Agreement

26. Giving effect to this Agreement

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document) that the other party may reasonably require to give full effect to this Agreement.

27. Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver (through its Principal Representative) and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right; and
- (b) a waiver of a right on one or more occasion does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

28. Operation of Agreement

- (a) This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty related to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

29. Consents

Where this document contemplates that a party may agree, consider or consent to something (however it is described) the party may:

- (a) agree, consider or consent, or not agree, consider or consent; and
 - (b) agree, consider or consent, subject to conditions,
- but must do so reasonably, unless this document expressly contemplates otherwise.

30. Publicity

A party must not make any public statement relating to this Agreement unless:

- (a) the other party has previously agreed to the form and content of the statement; or
- (b) the statement is required to be made by law or a stock exchange.

31. Relationship between parties

Nothing in this Agreement creates a relationship of partnership, principal and agent or trustee and beneficiary between Melbourne Water and Western Water.

32. Operation of Indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes any payment in respect of which the indemnity is given.

33. Survival

The termination of this Agreement does not release a party from any obligation relating to this Agreement that, by its nature, survives completion of the Agreement, including any obligation of indemnity or confidentiality.

34. Counterparts

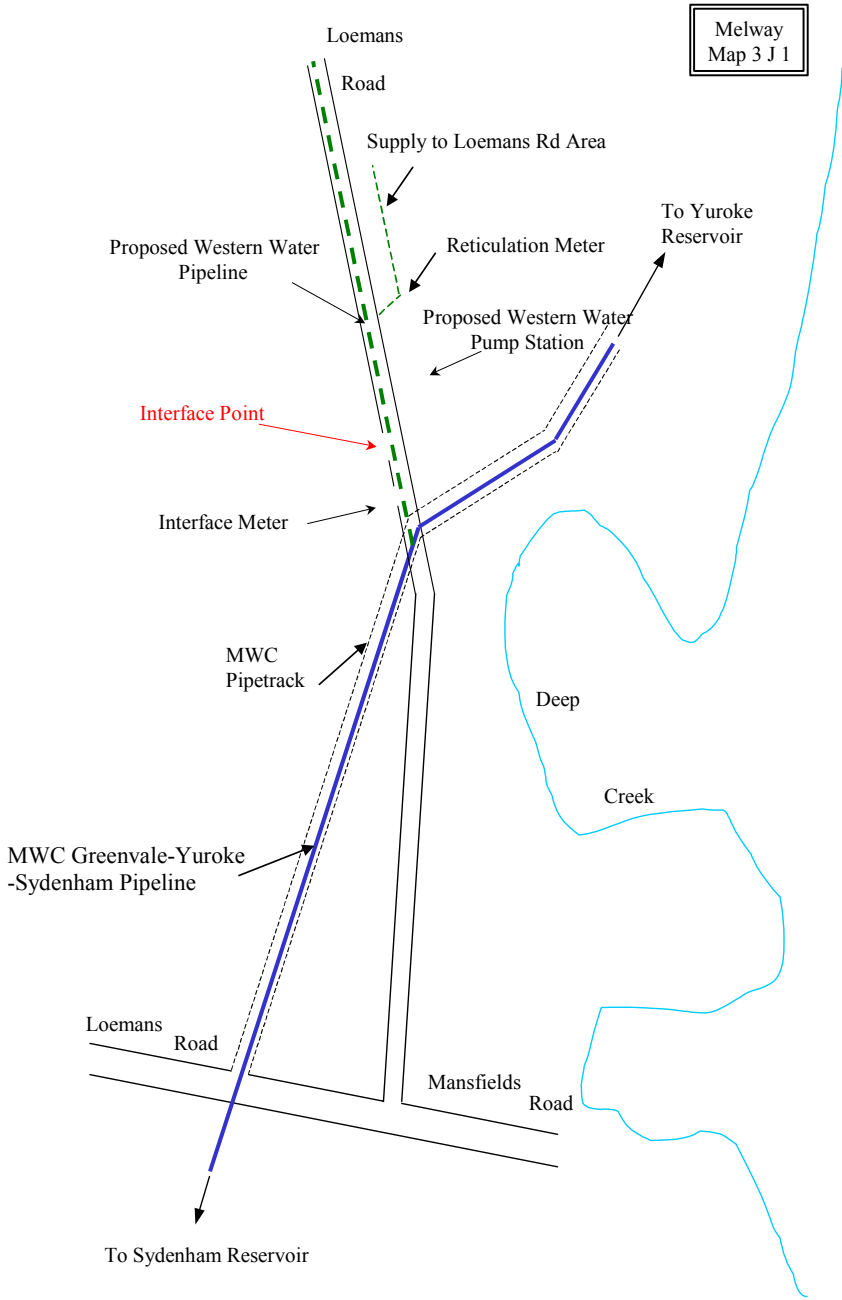
This document may be executed in counterparts.

Schedule 1

Site plan of location of Interface Point

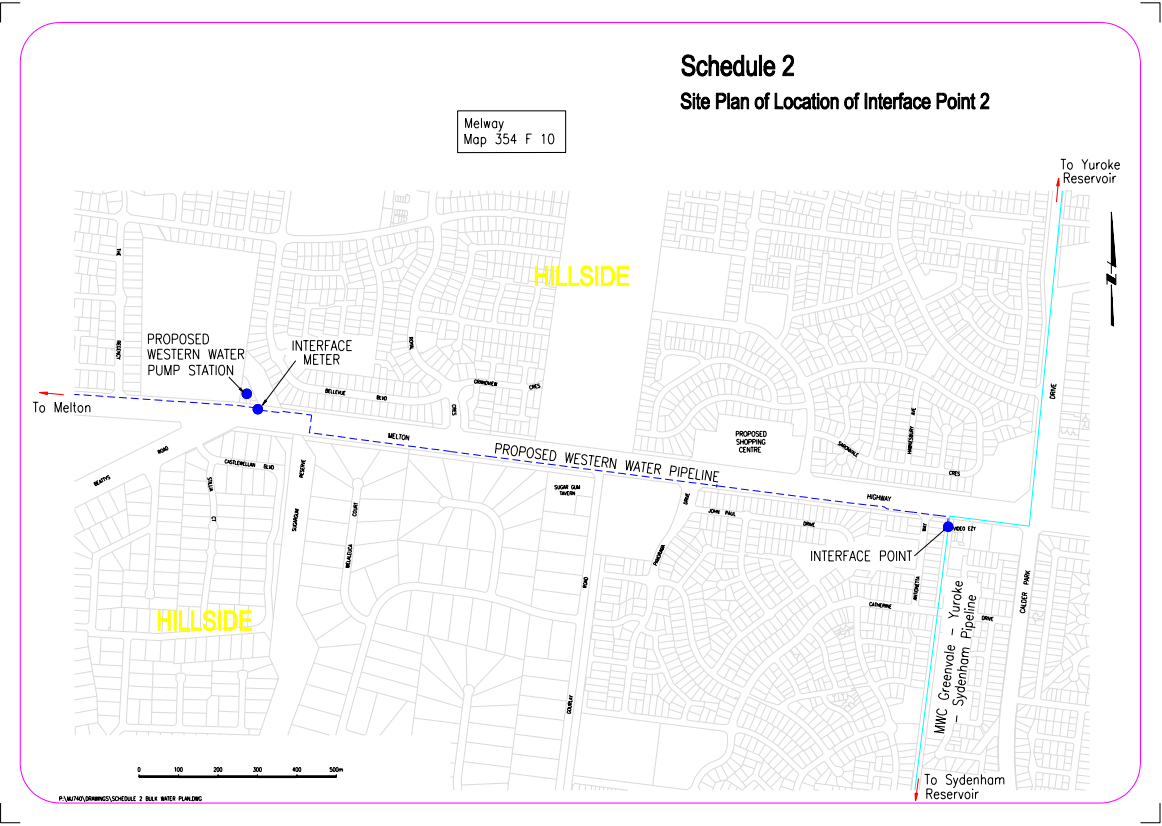
Schedule 1

Site Plan of Location of Interface Point 1



Schedule 2

Site plan of location of Interface Point 2



Executed in Melbourne.

The Official Seal of Melbourne Water Corporation was duly affixed in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

The Common Seal of Western Region Water Authority was hereunto affixed in the presence of:

Chairman Signature

Director/Signature

Print Name

Print Name

Chief Executive Signature

Print Name